

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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THE UNITED STATES OF AMERICA

**Hon. Hugh B. Scott**

11CR267A

v.

**Report  
&  
Recommendation**

Scott J. Bald,

Defendant.

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Before the Court is the defendant's omnibus motion seeking various pretrial relief (Docket No. 9).<sup>1</sup>

In an indictment dated August 30, 2011, defendant Scott J. Bald is charged with conspiracy to commit a robbery of a pharmacy in violation of 18 U.S.C. §§ 2118(d) [Count 1], robbery of a pharmacy in violation of 18 U.S. §§ 2118(a) and 2 [Count 2], and conspiracy to distribute oxycodone in violation of 21 U.S.C. §841(a)(1) and 841 (b)(1)(C) [Count 3].

The defendant moves to suppress the photo array identification of the defendant by a witness or confidential informant in December 2010 and early 2011. (Docket No. 9 at page 19). The government represents that no identification procedures were used in this case. (Docket No. 10 at page 17). The defendant is entitled to rely upon this representation. Thus, the motion to

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<sup>1</sup> The various discovery issues raised in the instant motion are the subject of a separate Decision & Order.

suppress should be denied as moot.

Pursuant to 28 U.S.C. §636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

**ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within fourteen(14) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as W.D.N.Y. Local Rule 72(a)(3).**

**FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED HEREIN.** Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed2d 435 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and W.D.N.Y. Local Rule 72(a)(3).

Please also note that the District Court, on *de novo* review, will ordinarily refuse to consider arguments, case law and/or evidentiary material which could have been, but was not, presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to W.D.N.Y. Local Rule 72.3(a)(3), “written objections shall specifically identify the portions of the proposed findings and

recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court’s refusal to consider the objection.**

So Ordered.

*/s/ Hugh B. Scott*

United States Magistrate Judge  
Western District of New York

Buffalo, New York  
December 28, 2011